115 (3) APPENDIX

Supreme Court, U.S.
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Case No. 07-1587

IN THE

Supreme Court of the United States

In Re,

Verlyn E. Richards, Pro Se

V.

M.S.P.B Respondent

And/ Or

Department of the Army

Rehearing Petition

To

Petition for an Extraordinary Writ

In the

Nature of Mandamus

Or,

In the Alternative,

On Petition for a Writ of Certiorari

To the

United States Court of Appeals

For the Federal Circuit,

And/ Or

United States Court of Appeals

For the Sixth Circuit.

PETITION FOR A WRIT OF CERTIORARI

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Appendix, Part (C)(supplemental brief appendix (PSA) impeaches Federal Circuit/M.S.P.B/ AJ findings and conspirators, proxies (TACOM CG, Thompson (2003-2004), ARep, AUSAs', OTJAG attorneys, Interim DCG, SES Mehney; AUSAs' expert psychiatrist /psychologist witnesses' (Drs. Benedek and Clark), and psychiatrist, Dr. Saul Forman material false representations /reports by comparing them with the record. PA, P. 58.

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1. The Federal Circuit, M.S.P.B. and AJ (AJ) **failed to carefully examine Richards' involuntary retirement appeal (App) and affirmative defenses (ADs), allegations of coercion, duress and misinformation,** ....Appeal, Pg(s)1-5 ¶ 4(a-l)...including disabilities. by giving deference to the district court's grant of SJ to Defendant and lightly dismissed Richards' discrimination / retaliation claim so did not examine and allot weight to events April 15, 1996- October 16, 2004, when the district court erroneously granted summary judgment to Defendant, the suspension period, September 24, 2004 (when Richards was unceremoniously dismissed from the premises) to Richards' retirement September 25, 2005(eleven months by, adopting the agency representative's misrepresented argument,

> "Res judicata applies to Richards' discrimination claim. .....Virtually all the incidents referenced in the subject appeal, which occurred up until August 2004 are included in that Federal District

Court Action." ARep's Response (ARR), ¶2, to Richards' involuntary retirement appeal.

Initial Decision (ID): "[Richards] has not made a nonfrivolous claim of coercion. **[Richards] does not allege the agency subjected her to duress or misinformation, or that she was mentally incompetent at the time of her retirement."**

Compare Excerpts, Involuntary Retirement Appeal (App)Affirmative Defenses,¶4 (a-i), P. 5.

AD(a), "Discrimination... hostile and abusive environment... disparate harassing, insulting, and publicly humiliating treatment, illegal and disparate decisions, and retaliation, materially altering the terms, conditions, privileges, and benefits of her employment (including express duties), based on sex, disability, and retaliation for repetitive protected activity from 1996 to this day, advantaging those not in protected classes, similarly situated in ways, which disadvantaged Richards, and caused severe emotional and physical harm," Protected activity and Awareness of Protected Activity to covered entities: App ¶s13, "Richards repetitively engaged in protected activity," See violated terms of employment.

AD (b), "Proxies, who knew or should have known the actions were illegal discrimination, with reckless disregard of their duty failed to properly investigate and take remedial action (Faragher), repetitively retaliated against Richards for her protected activity, **through devious deceitful and illegal means,** creating a

hostile and abusive work environment via continuing violations to this day, and finally with the power of the enterprise behind them conspired to rid the Army of Richards, by leaving her with no other choice, but to retire).

AD(c), Proxies, attorney agents, and proxies expert witness psychiatrists' unclean hands and or misconduct through devious, deceitful, and coercive tactics committed fraud on Richards and the court) App ¶ 21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of [Richards]: It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerated the continuing malice, ill will, and revenge for Richards' protected activity, with a specific purpose in mind. Rather than uphold justice, and ensure the integrity of the system, they played a "dirty game" by ratcheting up the adverse acts January 2003 through 2004 and creating such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her.

AD(d) **Intentional infliction of emotional and physical distress:[**Participants]who, with the power of the enterprise behind them, **subjected her to emotional, physical, and financial duress, misrepresentation, and coercion from 1996 to the present, accelerating and broadening the scope of their adverse discriminatory, retaliatory, harassing conduct, and illegal and disparate decisions, after Richards transferred to federal court, October 2002,"** The agency was aware that she has developed serious

health conditions; and that she was in financial straits having no income for most of the 2003-2004 rating period (before her suspension) because of the agency's violation of TACOM -R, 600-5, SPHM June 3, 1997, Ch 6-, 6-7; 6-8, .Pg(s) 198-200 (Advanced Sick Leave) Tab C (13).

AD (e) Defamation of reputation

AD(f) Violation of statute, executive order, Army directives and regulations, which they knew or should have known were unlawful. Violations, Tab (s), at "C;" and Tab I (3), Pg(s) 8-13; Appeal, November 22, 2006 ¶21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of Richards: It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerating the continuing malice, ill will, and revenge for Richards' protected activity, with a specific purpose in mind. Rather than uphold justice, and ensure the integrity of the system, they played a "dirty game" by ratcheting up the adverse acts January 2003 through 2004.by creating such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her. They went after Richards, using every coercive and illegal tactic available, ignoring statutes and regulations, even when Richards pointed them out.

AD(g), Abuse of process and /or discretion: Attorneys and DOD investigator abuse of the investigative and discovery process in administrative and federal court proceedings; denial of a fair and impartial investigation, e.g. Preparing and /or encouraging

management witnesses to testify falsely; DOD investigator denying Richards' right to ask relevant and material questions during the FFC."

AD(g-h), Economic and emotional duress [Participants]who, with the power of the enterprise behind them, subjected her to emotional, physical, and financial duress, misrepresentation, and coercion from 1996 to the present, accelerating and broadening the scope of their adverse discriminatory, retaliatory, harassing conduct, and illegal and disparate decisions, after Richards transferred to federal court, October 2002,"

AD (h), The agency breached the parties' April 19, 2005, valid and lawful August 19, 2005 hybrid oral / written settlement agreement by negotiating in bad faith and repudiating material terms, April 29, 2005,wherein **Richards alleges deceit, nondisclosure, coercion, misrepresentation of material facts and duress** by the agency representative, and CG Thompson. Reinstated Petition, determination of validity, finding agency breached, facilitation and acceptance of material terms of oral settlement agreement into the record, and thereafter enforcement, received by the board, June 14, 2005, Docket No. CH-0752-05- P. 5, [Just as a court may review a settlement not enforced on the record to determine its validity a court can also examine a repudiated settlement agreement. See App. Arg.¶ 4, **Duress, coercion, and misrepresentations by the agency forced Richards into involuntary retirement;** [AJ stated during the December 2, 2005, negotiations that she

didn't "know anything about THAT], (missing from AJ Manrose's 'docket', even though he responded, June 17, 2005). AJ Pula's assistant subsequently mailed the original to Richards. PFR, PA, P. Richards asked twice for AJ Puglia's dockets, received resistance. Addendum, PFR, PA, P; App ¶s 2, 4, 8, 13, 15, 21. The agency in bad faith failed to fulfill its promise, to negotiate all the unsettled terms...ARep made a false statement of material fact with knowledge of its falsity in order to induce Richards to act. He failed in his duty to disclose that he had no intention to negotiate the amount of the only unsettled term, the award /early out/or whatever the agency wanted to call it, after the parties agreed to all other material terms.¶s,7-8; He unequivocally offered to negotiate the three additional terms on April 19, 2005,(R- ¶ 10, "Consideration flowing from Richards was substantial (included retirement and foregoing agency actions after suspension). She relied on his statement to her detriment by negotiating with third party beneficiaries, and having to default. "Restatement (Second) of Torts § 551(2)(a). Damages high, house foreclosed etc.). The AJ (Manrose) was in the process during the earlier negotiations, wherein the agency representative's offers were rejected. He is aware and knows that the agency is aware that Richards never intended to retire; believed firing her would assist her major appeal; and voluntarily retiring could diminish potential damages (front pay) on her federal discrimination case.

AD (I) Denial of Richards' minimum due process rights in the investigation of Richards' security clearance by violation of security regulations and executive order, and acting in bad faith. App, ¶4, V-I "...illusory where the agency violated Executive Order, #12968, § 3.2. (c),Access to Classified Information, 1995, (implemented by DODD), and chose two of the agency's proxies, named participants in Richards' discrimination case, one as the proposing official (Mehney) and the other as the deciding official (CG Thompson) to determine, whether Richards retains her secret clearance, and /or whether she would be suspended without pay, Tab C (16), § 3.2. (c);App ¶ 2,3,4, Richards' Declaration(RDecl); App ¶s13 Richards repetitively engaged in protected activity and 14) Beauchamp, even more than Andrews retaliated; App ¶7) Andrews, Beauchamp, and Newberry played revengeful devious/ deceitful, and controlling mind games with Richards, App ¶s 11, 13.

2. The AJ adopted the agency representative's 'copy catted' version of AUSAs' misrepresented "ten" acts, "when 60-70 are closer to the mark. FN 8.

> "Richards did not show that discrimination or retaliation contributed in any manner toward her claim of involuntariousness." Markon, 71 M.S.P.R. at 578. "[Richards] alleged the agency violated the U.S. Constitution and discriminated against her. "The U.S. District Court for the Eastern District of Michigan

granted the agency's Motion for Summary Judgment in the appellant's 1999 sex discrimination suit alleging agency officials subjected her to remarks such as "little legal gal,""my girl attorney,""dear," and "young lady;" (AUSAs' first "act.' Derogatory Comments by Andrews and Kirby, RDecl, ¶109...), seated her in the back row at video conferences (VTCs) (AUSAs' second "act.'); denied her awards (AUSAs' seventh "act.') and supervisory opportunities (AUSAs' third "act.' rating off site attorneys, and Fourth "act", Anniston Depot Commander Potts direction not to communicate with Richards in any fashion without his permission. April 11, 1999, RDecl, ¶336; refused to "accept" her (AUSAs' Sixth, and Tenth "act,"... Not selected as advisor to Source Selection Authority Source); rated her performance disparately low(AUSAs' seventh "act.'); failed to include her in meetings (AUSAs' sixth "act,' Not Excluded from the Board of Directors at TACOM RDecl, ¶277,) or allow her participation on TACOM's Performance Review Board (AUSAs' eighth "act.'); and limited her hiring authority (AUSAs' fifth "act,' Legal Office Staffing: ¶ 124.) **See Docket No. CH-0752-05-0128-I-1: Agency File**, Tabs 4(c) & (I). PA, P; PA, P.; Seventh "act," criticized her performance (AUSAs' seventh "act.' SES Performance Award (PRB); P 20. *Eighth "act," Nonparticipation on SES Performance Review Board (PRB); Ninth "act," Law office facilities. Comparison testimony. PA, P.

3. The AJ adopted the ARep's misrepresentation of direct evidence of retaliation. ID, Pg 4, "In this appeal she alleges General Beauchamp told the Equal Opportunity investigators that he did not give her performance awards because she had difficulty working with people and misunderstood the nature of her position (.Misrepresentation of material facts, direct evidence of retaliation based on protected activity). **PA, P... 167.** ADs (a), (b) **Compare, Beauchamp admits he failed to grant Richards SES performance awards because of her protected protests to him.**

   "Basis for downgrading Ms. Richards' appraisal objectives and my reasons for not granting her any performance awards, were that, Verlyn had difficulty accepting decisions that she disagreed with. She lacked understanding of her position as a staff officer, her role, and the role of a Commander. She had difficulty working with people that did not fit within...constructive... Environment of an SES is different, more complex, and complicated." .... Examples of issues she disagreed with ... seating, rating, TDA (Table of Distribution and allowances)." (Can you give some examples other than the areas that were identified as allegations in her Complaint?) No. T. 68, Ln(s) 1-25, 69, Ln(s)1-25,74, 18-25 and75, V-XII; RDecl ¶556.

4. The CCF investigation of Richards' security clearance in 2001-2002 and the March 14, 2002 determination that Richards would retain her clearance foreclosed

a reinvestigation on the same derogatory information in 2004.

Federal Personnel Manual, chapter 732, subchapter 1, paragraph 1-6b. §154.41(b) (1) (ii) and (2) (ii). National Industrial Security Program Operating Manual NISPOM). § 2-203. **"Previous grant of a personnel clearance must be honored anew without further investigation or adjudication "unless significant, new, derogatory, information that was not previously adjudicated becomes known to the granting agency."]** See EO 10865, §(c), see ISCR case no. 98-0320 (April 8, 1999), ¶ q, PA, P. 38.

5. In 2001, an OTJAG government attorney, Schmidt, assigned to defend the agency during the administrative process (currently assigned to assist the AUSAs, along with Major Eric Krause) attempted to 'go after' Richards' security clearance after Richards on her own accord submitted significant slot machine losses $150,000, actual damages to the agency, identified in Richards' 'therapist, Benaway's July 5 (Tab F (16), Pg 180-181), and July 12, 1999 letters to the agency, Tab F (17), along with Windsor Gambling Records, Tab MA (3); Motion for Sanctions against Army, Tab MA (5), Pg(s)14-26. See AD (g), Abuse of process and /or discretion. She turned them over to security, despite the documents being submitted to support these damages to security and being under the control of the administrative judge.

6. In 2001-2002, the Army CCF performed a thorough investigation and found that: Richards did not partake in illegal drugs; alcohol consumption was

next nothing; did not participate in illegal activity, a model citizen, mother, friend, and leader. Richards' Values, January 14, 2002, Senior System Evaluation Report to CCF, MA (6), Pg(s)14-2; April 11, 2001 General John Caldwell's Notice, Consideration to Temporarily Withdraw Eligibility for Access to Classified Information, and Richards' April 12, 2001 Response, Tab MA (2), Pg(s) 2-5,. Request for financial statement, and financial statement with attachments. The financial investigation showed $135,000 salary, no dependants, considerable assets, bills timely paid, and savings of more than $100,000... Richards' 2001, security application also informed security she had gone to casinos, other than Windsor (MGM and Motor City, Tab MA (6). Government hired psychiatrist, Forman, concurred with Richards' treating mental health professionals, two psychiatrists, Kilaru and Shah, and clinical psychologist, Benaway, major depression, compulsive gambling in remission, and no defect in reliability, judgment, or objectivity.

March 14, 2002, CCF finds,

> "The decision was based on all available information" ... "We took into account your recent compulsive gambling activity and your current diagnosis of major depression, moderate without psychosis. Your security clearance is contingent upon your continued compliance with your mental health treatment and **avoiding personal behavior, which would render you ineligible.**" Tab MA (7).

7. Federal Circuit, AJ / Board committed harmful legal and factual error by failing to find AGENCY CONSPIRATORS violated CFR§154.10 (c) (6) by, concluding Richards could not rely on applicable EOs or implementing regulations intended to preclude bias in the investigative process **(AD (f))** and finds Executive Order 12,968 does not create any substantive or procedural rights, when it has the force of a statute...11-13 and **failed to examine agency violated EOs' security clearance procedural directives and implementing regulations (PA, P.29)** Violations, Appeal Tab (s), at "C"; and Tab I (3), Pg(s) 8-13.

(1) "DODD 5200.6, **Definitions (e) "Employee**," ... a person, detailed or assigned to, an agency, including an expert or consultant to an agency....; personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head."

(2) CFR§154.10, (C) (6), **Restrictions On Investigators:' Investigators:** shall ***refrain from accepting any case in which the investigator knows of circumstances that might [not 'will', but 'might'] adversely affect his fairness, impartiality, or objectivity.***'"The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DoD command ... Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for

appropriate follow-up by DIS. DoD Components ...will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

(3) CFR §154.31(c) Appendix E Request Procedures, §A (a), Authorized requesters and personnel security determination authorities, *per* 'Restrictions on Investigators' at *32 CFR §154.10, (C) (6)* shall refrain from accepting any case in which the investigator knows of circumstances that might **[not 'will' but 'might']** adversely affect his fairness, impartiality, or objectivity, when conducting investigations under the provisions of this part.

(4) "EO 13087, Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security. Art, 1.

(5) "DODD 5200.6 § 3.1. "All employees shall be subject to investigation by **an appropriate government authority;"** CFR §154.31 and Appendix E, Request Procedures; For an investigation to be "appropriate," it must be conducted by an authorized investigative agency. Definitions, (c) "Authorized investigative

agency": **agency authorized by law or regulation to conduct** ... investigation of persons, who are proposed for access to classified information; DODD 5200.6, §3.1 (b) Eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed;

(6) §4.1, "It is **DOD policy that "All proceedings provided for by this Directive shall be conducted in a fair and impartial manner";** ' except as otherwise provided for by E.O. 10865,' which states, 'Eligibility shall be granted only to employees for whom an appropriate investigation has been completed, a discretionary security decision must be based on judgments by appropriately trained adjudicative personnel and expressly incorporates 10865 provision, **"The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information,"** at 3.1(c), which repeats § 3.1(b) and the EO 12968 provision at § 3.2. (c), "Basis for Eligibility Approval, "All employees shall be subject to investigation by an appropriate government authority."

(7) EO. § 3.2 (a), "Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this

order, or otherwise available to security officials.

(8) [O]therwise available to security officials," when read together with CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations, and with EO§ 3.2 (c), "Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order, to resolve issues that may arise during the course of a background investigation or reinvestigation,"

(9) CFR §154.10, C (5) Refrain from using, under any circumstances, covert or surreptitious investigative methods, means information lawfully obtained. 'Serious' questions" cannot be based on significant derogatory information previously adjudicated, when an investigation is a reinvestigation].

(10) DODD 5200.6, Reinvestigations, Access, Eligibility Standards, January 1987 Chapters 2, Criteria for Application of Security Standards, 2–200, page 5 incorporates EO 10865, §(C) DODD 5220.6, incorporates E.O. 10865 at. § 4.3; EO 13087, A. ***L.*** and CFR §154.19 (a), Reinvestigation, "DOD policy prohibits unauthorized and unnecessary investigations; EO 13087, A. ***L.*** Ad, "To conserve investigative resources and to insure that personnel security investigations are limited to those... clearly authorized by DOD policies; organizations

requesting investigations must assure that continuing command attention is given to the investigative request process." It is important that the provision of Executive Order 12356 requiring strict limitations on the dissemination of official information and material be closely adhered to...

ID: "[Richards] has not made a nonfrivolous allegation that the agency knew its indefinite suspension was unsustainable, or that no arguable basis existed for it. Page 5, Richards argues that she should not have been suspended and that the agency should have restored her clearance based on the evidence she provided.(citing FN 6.); Page 5, FN 6, **Her only procedural allegation was that agency violated Executive Order #12968, Access to Classified Information" by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it], does not support an actionable claim; Executive Order 12,968, signed into law by President Clinton, expressly does not create any "substantive or procedural" right that is enforceable against federal agencies. Exec. Order No. 12,968, 60 Fed. Reg.40,245, 40,254 (Aug. 2, 1995).**

Compare,

Executive Orders (EOs), 12968's and 13087's 'boiler plate' provision is intended as 'clarification that the executive branch is not transgressing into the territory of Congress and 'making new law.'

"This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."]],

"Where a presidential directive is clearly authorized by the Constitution or is authorized by a statute authorized by the Constitution and the delegation of power is in turn constitutional, the directive has the force of law (Here, equal protection and Title VII), all courts of the United States are bound to take notice, and to which all courts are bound to give effect." *Armstrong v. United States,* 80 U.S. 154, 156(1871).

8. Named participants in SES, Richards' discrimination suit and AUSAs were motivated to influence Forman to change his 2002 opinion concurring with Richards' mental health professionals, which significantly damaged AUSAs' defense. AMC four star, General Kern, CG Thompson's supervisor and rater, who directed CG Thompson to remain in charge of Richards after Thompson's tour ended September 28, 2004; CG Thompson, designated Official Requester and Deciding Authority; SES, DCG Mehney (Proposing Official), AMCCC, SES, Szymanski, and the same attorney agents, AUSAs, Rigdon and Woodard, and OTJAG attorneys, Schmidt and

Krause, assigned to assist AUSAs, who committed fraud on the DC; ARep, Buonocore, assigned to defend agency at M.S.P.B. in a position of potential for undue influence, if he wants a SES and fails to please Szymanski (See Richards' coercion and misrepresentation allegations and supporting evidence of repudiation, settlement agreement (self-contained documents, with a Table of Contents AD (h), Tab MC (43); Dr Benedek and Dr. Charles Clark, AUSAs' expert witness, psychiatrist / psychologist team hired by the AUSAs to defend in Richards' federal court discrimination case (Conspirators), (false material statements in report), and the government selected evaluator, psychiatrist, Dr. Forman hired to evaluate Richards for security clearance purposes (friend of Benedek , who studied under her, made false material statements in his 2004 report and violated procedural regulations); AMC / TACOM security officers, and CCF personnel in a position to be unduly influenced by CG Thompson and Kern, who were considered employees for security clearance purposes, AND THUS, bound to comply with security clearance investigative procedural directives and implementing regulations , **had interests conflicting with a fair and impartial investigation, and knew of circumstances that "might" adversely affect [their] fairness, impartiality, or objectivity in their perspective roles.** CFR§154.10, (C) (6).

9. Although the conspirators were not authorized investigators or properly trained adjudicators they self-appointed themselves to the adjudicative team rather than refraining from any involvement and

illegally triggered the 2004 **reinvestigation,** a forbidden "second bite at the apple." They schemed to among other things to create basis for CG Thompson to illegally trigger a reinvestigation of Richards' security clearance and violated procedural regulations **(AD (c).**

10. Lower judicial bodies erred by failing to consider the totality of the evidence and adopted the ARep's false and material affirmative representations including that CG Thompson and SES Mehney were not named as participants in Richards' DC action.

    ID, "[Richards] alleges the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension. **"[Richards] named neither Mr. Mehney nor General Thompson as defendants in her civil lawsuit,** which was dismissed on the agency's Motion for Summary Judgment. See Docket No. CH0752 -05-0128-1-1: Agency File," Tab 4(1).

11. Not only were they named, the ARep knew it. **Compare ID,** d***ocuments given to ARep in*** response to interrogatories/ production of documents' (Excerpts , Richards' SJ Hearing Declaration (RDecl),¶ 599-644 CG Thompson)incorporated in App. Statement of Material Facts, ¶ 1, Tab E; and Senior Business Law Attorney, Burt's affidavit, Exclusion from Source Selection, improper seating, Mehney bypassing Richards ...screaming at her.. Tab P (11), Pg 33-34. **PA.** [Violation of regulations applicable to Richards'

duties, authority; Richards makes the final TACOM legal decision. **PA**].

ARep also states,

"He [CG Thompson] found nothing to lead him to conclude the action had been orchestrated by the Department of Justice or that he and Mr. Mehney had to recluse themselves from the case." ***ARep's Response to involuntary retirement appeal (ARR) ¶ 8.***

[ARep also falsely informed the AJ and Richards that there were no regulations that required Thompson and Mehney to recluse themselves. Richards told her she had not looked for them, yet].

12. The AJ failed to examine the nexus between violation security procedural regulations, and the conspirators accelerated and expanded scope of adverse 'acts' to target Richards' illnesses and loss of finances that it caused in the first place January 2003 through 2004, multiple "parallel" acts, **PA,P.** CG Thompson was the major 'player' in the adverse actions and regulatory and FMLA violations, 2002-2004 to this day that the AJ found did not rise to a specific claim of duress. Excerpt Richards' SJ Hearing Declaration (RDecl), *Documents* in response to interrogatories; RDecl excerpt V-III, ¶s 563-567 (CG Thompson) and Burt's affidavit, Mehney). App ¶21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of Appellant: "It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerating the continuing malice, ill will, and revenge for Richards' protected activity, with a

specific purpose in mind, to create such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her. They went after Richards, using every coercive and illegal tactic available, ignoring statutes and regulations, even when Richards pointed them out." They used Richards' illnesses to create false scenarios of poor judgment, the building blocks to trigger an illegal reinvestigation of Richards' security clearance as a means to remove her from employment.

13. The agency's adverse 'acts' before Richards' suspension October 2004, did rise to the level of a claim of duress as the agency, lead by CG Thompson and encouraged by the AUSAs, beginning 2003, ratcheted up and expanded the scope of the adverse 'acts' to target the illnesses and loss of finances it caused in the first place-- **used those illnesses to create false scenarios of poor judgment, the building blocks to trigger an illegal reinvestigation of Richards' security clearance as a means to remove her from employment, and committed an illegal reinvestigation** of her security clearance 2004, by violating EOs and implementing regulations, "

> "ID Pg 4, Fn 3, [Richards] complained about her treatment prior to her suspension, **but did not raise allegations that rise to a specific claim of duress.** " See Richards' Appeal (App) ¶ 3. Pg 4, Footnote 3, She also alleges the agency subjected her to "constant abuse" and false scenarios that made her office look bad."AD(s), b-e. See Richards' Appeal (App) ¶ 3.

14. CG Thompson was a major participants / conspirator in the acts complained after Richards transferred to federal court, October 29, 2002, through and after the time Richards retired (AD (c))", Proxies, attorney agents, and proxies expert witness psychiatrists' unclean hands and or misconduct through devious, deceitful, and coercive tactics **committed fraud on Richards and the court)** App ¶ 21 Unclean Hands, Retaliation, And Conspiracy To Rid The Army of [Richards]: It slowly became apparent that CG Thompson and Szymanski, "encouraged" by the AUSAs, accelerated the continuing malice, ill will, and revenge for Richards' protected activity, with a specific purpose in mind. Rather than uphold justice, and ensure the integrity of the system, they played a "dirty game" by ratcheting up the adverse acts January 2003 through 2004 and creating such intolerable working conditions that Richards would either quit on her own, or they would drive her to misconduct and create a reason to fire her.

    i. January/early February 2003, Chief of Staff, Colonel Gary Carney, in a room full of people refuses to "allow" Richards, the only senior person present in a meeting, to speak, and after she later "called him on it," turns her leave requests over to the CG via DCG, despite fact his role, supposedly, is just to take care of the administrative part. Excess scrutiny, January 23, 2003, Id RDecl, TAB E.

ii. Mrs. Katharine Szymanski, Deputy Command Counsel, who followed Edward Korte, as the AMC Command Counsel sets out to ruin Richards' reputation. January 2003. Szymanski's trip to TACOM to do a Productivity/Review(PQR) of the TACOM, legal office, Lawyers informed Lewandowski that they were attempting to put 'bad words" in their mouths Lewandowski Aff, II, I (22), Pg 86; Id. RDecl, F, Pg(s) 86).; refuses to consider the legal office as a whole, comes to attack at Warren. See **July** 16, 2004, Lewandowski Declaration (Szymanski) (at Pl Ex, 73 and testimony (Mehney).**PA, P.73-74.**

iii. Thompson begins to excessively scrutinize Richards ...directs her not to attend a training class, which he was attending, despite SESs being encouraged to attend. MB (3), Pg(s) 11-15.

iv. May 6, 2004, Dr. Kirsch invoked the FMLA on her behalf; Kirsch letters, dated May 21, June 11, July 9, addressing need for tests, U of Michigan neurologist's diagnosis, upper airways resistance syndrome, August 9, 2004, June 11, 2004, Kirsch certifies tests scheduled for June 22-23 2004, excuse to June 24, 2004; TAB MC (31), Pg(s) June 17, 2004, Dr. Ervin Thompson, Psychiatric Evaluation, TAB MC (32), June 18, 2004, Dr. Bryant Welch, Psychological Evaluation Report, dated June 18, 2004.MC (33) June 22-23, 2004 University of Michigan , Neurology Inpatient Test Results, MC (34) June 22, 2004 TACOM Intel &

Security Fax, Authority to Release Medical Information and Records; TAB MC (35), July 8, 2004, Dr. Saul Forman Psychiatric Evaluation Report(References relied on Benedek-Clark Report to arrive at his conclusions; references submittal of Major Eric Krause, OTJAG attorney assigned to assist AUSAs, Rigdon and Woodard, in Richards' federal case. TAB MC (36); July 9, 2004 Kirsch letter certifying extension needed until July 19, 2004 and diagnostic tests done.TAB MC (37),; August 9, 2004, U of Michigan, neurology test results, Upper Airways Resistance Syndrome. TAB MC (39);

A Number Of Agency Adverse Actions Suspiciously Took Place After Documents Were Submitted For The SJH, July 16, 2004,

v. August 19, 2004, CG Thompson Reprimand Letter, Dated August 5, 2004, MC (41): One day after the CCF decision to revoke Richards' security clearance Thompson reprimand's Richards for her attendance at work being unacceptable, and Dr. Kirsch's medical certification inadequate.

Compare,

Kirsch September 10, 2004, letter stating Richards should not attempt to return to work at that time, latest health problem, losing consciousness at work, early 2004, means her organs are not receiving enough oxygen to function normally.

vi. August 30, 2004 Bacon Memo Addressing

personal observations of Richards' health. MC (47)(clothes hanging off her (weight loss)...appears asleep.

vii. Richards' Ca-2, Application for Worker's Compensation, Kirsch, Attending Physician statement supporting application, ...**returning to work for the Army would be life threatening**; August 9, 2004, U of Michigan, neurology test results, Upper Airways Resistance Syndrome. TAB MC (39).

viii. August 24, 2004 CG Thompson downgrades Richards' Appraisal two levels to satisfactory, and specifically noting her absences from work were unacceptable; she had never received less than exceptional, when Richards was vulnerable, as she had a number of episodes, wherein she lost consciousness at work. She used sick leave or annual used for sick 45 % , 2003-2004;

ix. October 4, 2004, can't contact the person...197.October 9, 2004, Mehney & Richards, emails, Sept. 12&16, 2004.

15. Lower courts failed to carefully examine Forman's two evaluation reports, and thus, failed to realize that the Forman 2004 evaluation failed to meet the adjudicative guidelines. A second opinion is a "second bite at the apple and not 'new' derogatory information, not previously adjudicated..

> "Initial Decision (ID) P. 2, ¶ 2, [Richards] failed to make a non-frivolous allegation her retirement was involuntary **based on the CCF decision to revoke her security**

clearance... There was an arguable basis for the agency suspending [Richards], **the CCF Decision**. ID P. 5, FN 6; P. 6. [Richards] has not made a nonfrivolous allegation that the agency knew its indefinite suspension was unsustainable, or that no arguable basis existed for it. ID, FN2, "According to the agency, the CFF determined ***[Richards']*** **"pathological gambling in partial remission"** was a manifestation of defects in judgment, reliability, and stability...**"Some doctor" diagnosed Richards with dysthymia** ...**CCF** also based its decision on a doctor's opinion the appellant had "dysthymia disorder in remission;" ... [Richards] alleges the agency caused her illnesses by its "constant abuse;" ... She alleges the agency unfairly "targeted" her illness and financial vulnerability...She also alleges the agency subjected her to "constant abuse" and "false scenarios" that made her office look bad... [Richards] has not shown the agency wrongfully suspended her. She indicates that by August 9, 2005, she was unable to work at all, due at least in part to emotional reasons. Appeal File, Tab 7. "ID, Pg, FN2, FN5, FN 6, Appeal File, Tab 11.

16. The conspirators underhandedly passed the Benedek –Clark report, Tab MC (28), which the U S attorney, received, after Benedek evaluated Richards during discovery in Richards' case against the Army, through the system with the assistance of OTJAG attorney, Krause, Szymanski, AMC and

TACOM Security in order to influence Dr. Forman, hired to do an independent psychiatric evaluation of potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider. They violated regulation by selecting what they considered negative 'pieces' of information about Richards, an opinion from an unreliable source (Benedek), which was a second opinion and not new significant derogatory information. It was preadjudicated in 2002.

17. The 2004 investigation was an illegal reinvestigation, a forbidden "second bite at the apple," triggered by proxy and attorney conspirators and based on illegal preadjudicated information to rid Richards from employment. AD (c). 2004, CCF and Forman relied on a pre-adjudicated gambling records subpoenaed by the AUSAs and delivered by OTJAG attorney, Krause, to TACOM security Krause cover letter in investigative file sent to Richards **December 18, 2004** from Army Medical Command **(ten months after CCF received it).**, CCF notes in August 18, 2004 statement of reasons that it received those records **March, 2004,** seven months after Richards submitted her first FOIA request.

18. Dr. Forman, as an employee **and a personnel security determination authority, was required to** comply with executive orders and implementing regulations, and the agency was obligated to educate him so that he would be a

"properly trained member of the adjudicative team. As a psychiatrist hired o do an independent psychiatric evaluation of potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider he not a properly trained adjudicator. He knew or should have known he was to do an independent evaluation of Richards and should have at minimum thrown the Benedek report in the trash. Worse yet he was the AUSAs' psychiatrist expert witness defending the agency in Richards' discrimination suit, Dr. Benedek's friend, and colleague, who studied under her, Forman should have thrown the Benedek- Clark analysis in the trash. PA3;

19.. He failed to refrain from involvement in the adjudication process once he received the Benedek report. Not only was he a friend of Benedek, the US Attorneys' hired expert, he admits that he studied under her. Id 2004 evaluation report. Tab F (28), Pg 282-289. Dr. Forman did what the US attorney wanted him to do, change his 2002 opinion from major depressive disorder to dysthymia a very different depressive disorder, one that Richards' symptoms, personal and professional history, demonstrate, Not Possible.

20. **Forman's 2004 report falsely states Richards went to four casinos.** In 1999 Richards went to Windsor (submitted to CCF 1999), MGM, and Motor City (identified in Richards 1999, security clearance application; 2003, Greek Town (twice in January

2003 and frequently September-December). Forman failed to disclose that Richards had not gambled (slot machines) for about three years, 2000-2003, went 2 times January 2003, and a number of times during September-December 2003 and stopped on her own accord.

21. Forman falsely reports July 2004 that other mental health professionals agree with his 2004 compulsive gambling diagnosis. Richards' mental health professionals disagree. They establish he relied on preadjudicated treating physicians statements that Richards was compulsively gambling in 1999.

22. Forman failed to (1)consult with Richards' treating mental health professionals Id, Ad ?, PA 4; (2) perform a medical exam Ad?, PA 5; (3) follow the DSM-IV criteria to determine based on what Richards tells him in the interview, whether she was compulsively gambling PA 6; (4) perform an independent evaluation by drawing his conclusions just from what Richards told him Ad ?; PA7; (5) report honestly material facts, which Richards stated in the interview PA8; (6) withdraw (should have known re could not reevaluate Richards) Ad ?; PA 9.; and (7) Ad ?; PA10. friend and colleague of the AUSAs' psychiatrist expert witness, Dr. Benedek, defending the agency in Richards' discrimination suit.

23. July 2004 Forman falsely reports that Richards did not go to Gamblers' Anonymous, a preadjudicated issue addressed in 1999 -therapy notes, which Forman admits he did not read, and which establish

Richards did attend. Benaway testified she did. Richards told him 2004 that she did. September 22, 2004 declaration.

24. Dr. Benedek proved her unreliability. She pleases the hand that pays her. Here, the AUSAs, whose theory of the case included painting Richards as the 'ugly duckling and agency proxies as the swan. Dr. Benedek knew Richards did not have dysthymia and made material false statements to support the dysthymia diagnosis (January 28, 2004 report).

    a. **Benedek falsely states**, psychological test results performed by her partner, Dr. Clark showed that Richards is a person, who blames others for her problems. **Compare** Richards expert, Dr. Welch reviewed Clark's data and found,

        "Psychological testing and clinical interviews conducted on Ms. Richards all suggest that she tends to answer questions about herself openly and honestly rather than either embellishing or minimizing her difficulties. This was supported by the validity scales of the psychological tests employed by [Dr Clark]." ...Richards first blames herself for her problems."

Therapist, Benaway testifies,

"Richards' history, symptoms, and times, which I have seen her, when she is in partial remission (Major depression) establishes that she does not and did not have a dysthymic disorder. A dysthymic disorder is a long-

standing level of depression, involving low self-esteem, not feeling important, and feeling in a down mood most of the day. This kind of person can never really have fun. Nothing is really pleasurable. There's just kind of a blah feeling. If they have more serious depression along the way, as they come back, they only come back to the dysthymic level. They don't come back to a full range of affect, mood, positive mood on a regular basis a more positive attitude. They continue to be negative." Benaway Dep, Tab. (Compare Dr. Forman's description of Richards, Forman's July 8, 2004 report (References he relied on Benedek-Clark Report to arrive at his conclusions; submittal of Major Eric Krause, OTJAG attorney assigned to assist AUSAs, Rigdon and Woodard, in Richards' federal case. TAB MC (36) contradicting the "model of a person with dysthymia, Tab F

25. The CCF's August 18, 2004 notice of intent to revoke Richards' clearance and CCF's erroneous findings in reliance on Forman's false statements, finding Richards as having dysthymia, Richards failed to comply with the two conditions upon which she was allowed to keep her security clearance in 2002, "Failure to comply with her mental health treatment," and **failure to refrain from compulsive gambling** were a result of the "conspirators' numerous procedural violations.

26. DODD 5220.6, E2.A9.1.2.2 identifies, a condition *that could raise a security concern,* as information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g. failure to take prescribed medicine, and adopting Forman's erroneous finding that Richards failed to refrain from compulsive gambling.

27. Influenced by CG Thompson, PA15, are the agency's agent "employees," DODD 5200.6, Definitions (e). CCF violated the regulatory provision TACOM R, 600-5 SPMM, Chapter 14.

> "Richards] can, at [her] own expense, have an additional evaluation of [her] own choosing for evaluation for submission with the US Government Evaluation. TAB MC (27), Pg(s); See Tab MC (23)

28. Richards did go to mental health physicians of her own choosing, June 17 & 18, 2004, TAB(s) F(29), F(30) & F(31) October 11, 2004, ($12,000) and CCF refused to consider them stating they were performed for another reason(which they were not) Richards submitted her treating physician's Ca-20s, TAB (s) F (27) & F (28); with her request for consideration.

29. Benedek **falsely states**, "Richards told me she lost ten pounds," when she told her she lost 40 pounds. Weight loss is a significant factor distinguishing the two diseases. **Compare,** Benaway confirms Richards lost **forty pounds ¶, P.;**

Deputy Chief Counsel, Bacon confirms, that Richards' "clothes were hanging off her."

30. **Richards states** "I certainly did not carry my illness around with me all my life. I was in the performing arts, from the age of three, a dancer, in a varsity show kick line in college, up on a stage doing the Charleston to the twelve street rag with tons of beads, a Canadian Gold medalist professional figure skater, an elementary school teacher, who had children writing skits and making paper mache puppets or building model homes. I was also a high school radio show disc jockey, Chairman of the faculty counsel in my twenties, a stay at home mom for twelve years, who as a single parent, was active in the community, President of a nursery school for a number of years, a volunteered substitute at her children's school, and very active with her children, down hill skiing, swimming, track, and band. One daughter is a surgeon and assistant professor, heading a medical school surgery residency program (Now at Mayo Clinic). My youngest daughter is an engineer, and my son is a graduate of Parson's School of Design with a successful business in New York." (Declaration (written reply) September 22, 2004)

31. Benedek **falsely testified**, "Richards compared herself to a religious person, who walked on water." when Richards actually told her that before she assumed her position as the TACOM

Chief Counsel, her superiors believed she walked on water. See Petition,

32. Forman makes false statements of material facts 2004.

"[Richards] meets with Dr. Shah about every six weeks. In the past, she met with Sandra Benaway, a psychotherapist in Flint, Michigan, but now that she is on medication, which helps her. She told me that she no longer feels the need to continue therapy, except on an as needed basis." page 3, ¶ 2.See [DODD 5220.6, E2.A9.1.2.2, **Compare,**

i. **Richards avers,** "I told him that I did not see Ms. Benaway much, except on an as needed basis," Id September 22, 2004, Affidavit.

ii. **Ms. Benaway testifies,** "Ms. Richards sees Dr Shah regularly but only sees me on an as needed basis. She has continued compliance with her mental health treatment to the present. (See Benaway Dep. Tr. (February 27, 2004) at 28 and 29).I think that Ms. Richards is doing pretty well at this time and seeing me is at her discretion ...on a non-regular basis...She needed to stay on medication and she did that regularly." (Pg 37, Ln(s) 11-15).

iii. **Dr. Ervin Thompson states**, "I cannot image Ms. Richards stating, 'but now she is on medication, which helps her," she does not feel the need to see me. I just don't believe

that Ms. Richards said that_ Ms. Richards has been on medication, which has helped her since March 1999. Dr. Forman makes other statements such as she's "receiving treatment at her work facility. "Obviously, she is not. See Richards' September 22, 2004 Declaration, Tab MC (33), Pg(s) 163-187, at Pg(s) 170-187.

b) Forman made a, false statement that he informed Richards he knew Benedek up front in the interview.

i. **Richards avers,** "I brought Benedek up near the end of the interview. I informed him that Benedek lied by stating I compared myself to a religious person, who walked on water; that she wore a wig and looked like someone's nice grandmother, and I did not recognize her at the deposition. Forman responded by asking me, if I was aware that some orthodox Jews wear wigs, and that he knew her.

c) Forman falsely reports that Richards told him no one told her not to gamble.

i. **Richards states**, "I told him I was never told not to gamble by CCF. We were discussing CCF's determination that I could keep my clearance. I told him that I did not read CCF's letter as forbidding me to gamble. I read it as directing me not to use personal behavior, which is self-destructive, i.e., compulsive gambling (accompanied by significant loss of money as in

1999). My therapy treatment, in addition to working my recovery from major depression focused on stopping my compulsive gambling. "

ii. **Benaway testifies,** "In 1999, Yes; in 2003, No." "Ms. Richards was not compulsively gambling in 2003. She had not gambled for a good two years. In my July 12, 1999 letter, I explained that Ms. Richards 1997-1999 gambling was a way to escape from a deep depression, different from any kind of sadness, depressed mood, such as grieving she had ever experienced. It was a self-destructive means of self-medicating. She had no other defense mechanisms available. When she decided she had to stop gambling in 1999 because she lost so much money; she stopped, not suddenly, but stopped. When she went back again in 2003, she decided she had the strength to control it. She worked hard to control it and eventually got there. She won more than she lost. She owed taxes on winnings in 2003. She did tell me that she went back [She told Dr. Foreman she found machines that were geared to pay a lot of jackpots. "To do this she had to go often." ...It was like facing the enemy, gambling, and learning to control it.

33. "July 8, 2004, Dr. Saul Forman Psychiatric Evaluation Report references he relied on Benedek-Clarke Report to arrive at his conclusions; references submittal of Major Eric Krause, OTJAG attorney assigned to assist AUSAs, Rigdon and Woodard, in Richards' federal case. TAB MC (36); references the Welch and Dr. Thompson reports as Richards

asked TACOM security officer, Bedwell to give them to him after CCF refused to consider them. He ignored them;

i. **Preoccupied with gambling**: Forman never says that Ms. Richards is preoccupied with gambling. He does say she was enjoying her role as the "Empowerment Champion for the Command, drawing in crowds of people, who wanted to hear her speak. (CCF has the clippings from the TACOM Community Report) and she was gardening. Dr. Forman states that I reported that I was involved in social gambling but did not report I had predetermined financial loss. Of course he did not ask me that question. WHAT HE HAS NOT SAID is "she told me that she was preoccupied with gambling."
Forman considers "going back" to the casino ipso facto evidence. Of compulsive gambling. I explained to Doctor Forman that I happened to find slot machines that paid jack pots around $1,000-$1,300, often. If I came often enough I could read what these machines were doing.

ii. **Jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling**. Dr. Forman makes no mention of Ms. Richards jeopardizing any relationship in 2003. Forman states, "She is still seeing the same man she was dating, when I saw her in 2002. Ms. Benaway states, On the other hand, when Ms. Richards was gambling in

1997-1999, she jeopardized her relationship with her daughters, who were staying with her in 1997. Her oldest was doing a one year surgery fellowship at University of Michigan. Her youngest had graduated from college and starting a job. She lied to them when they asked where she was. They ended up understanding better after they met with me."

iii. **Committed illegal acts, such as forgery, fraud, theft, or embezzlement to finance gambling.** Dr. Foreman states, [Richards told me she paid her gambling debts but is behind in paying her lawyer. Richards avers, "I did not tell him I was behind in paying my lawyer. My lawyer will tell you that I am not behind in paying him. What I recall saying was that my money issues now focus on paying my lawyer. "

iv. Is restless or irritable, when attempting to cut down or stop gambling. He talks about Ms. Richards as being out going. Lacking any signs of tension and was helping out with her new little grand daughter; Benaway states, As far as I'm aware she was not irritable or restless, when she was cutting down in 1999 and stopped."

v. Lies to family members, therapist, or others, to conceal the extent of involvement with gambling. Benaway states, "Ms. Richards told me she went back to the casino in 2003." Dr. Forman makes no mention that Ms. Richards ever lied to anyone in 2003

vi. Committed illegal acts, such as forgery, fraud, theft, or embezzlement to finance gambling. Nothing illegal. Ms. Richards states, "I

did not believe that I was breaking any condition put upon me by CCF."

vii. After losing money returns another day to get even. According to Dr. Forman, Ms. Richards states, that she went often fall, 2003 because she had found some machines that she could read well enough if she went often and paid attention to what the machines were doing she could project, where they were in their cycle. She won about forty "jack pot" tee shirts, and paid taxes on an income of approximately $199,000, which establishes the truth of her statement.

ID Pg(s) 4 and 5, Pg 4, Fn 5, Pg 5, Fn 6, and Pg 6, Fn 7. "Richards does not make a non frivolous claim the agency failed to provide her with the procedural protections required under 5 U.S.C. § 7513, when indefinitely suspending her. Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968; [s]ince Richards received no income during that period her options were limited .....unpleasantness;

Initial Decision (ID) FN 6, [Richards] alleges Deciding Official, General Ross Thompson, abused his discretion by failing to request a waiver; ID, FN 6,[Richards alleges], deciding official General Ross Thompson abused his discretion by failing to request a waiver(mistaken belief that no regulation existed that would limit the deciding authority's (CG, Thompson), discretion not to request a waiver, which precludes Richards' continued

access to classified information during the investigation). **Compare,**

34. The agency with assistance of the agency Intel and Security Command and the Medical Command withheld the investigative file until December 2004. That file included substantial evidence, which established that involved proxies, lead by CG Thompson, and attorney agents initiated a conspiracy shortly after Richards transferred to DC October 2002. The motivation was (1) to remove Richards from employment, and (2) to influence Forman to change his 2002 evaluation, which concurred with Richards treating mental health professionals, and thus would support Richards' allegation that the agency caused and exacerbated her serious illnesses. **Plan I**, create false scenarios of other misconduct as another basis for CG Thompson as the official "Requester," to trigger the reinvestigation and remove Richards from employment. See **AD** (c) and (d). **PA,P.** **Plan II**, abuse the discovery process to investigate Richards for specific misconduct; **Plan III**, Set Richards up for psychiatric examination by a psychiatrist, who knew Dr. Forman and might influence him to change his 2002 diagnosis (AUSAs' expert witnesses, Benedek and Clark). Early 2004 the conspirators violated regulation by selecting what they considered negative 'pieces' of "information" a second "**opinion**" from unreliable sources, AUSAs' hired psychiatrist-psychologist expert witnesses Drs. Benedek and Clark's January 2004 evaluation related to the

DC action(not new significant derogatory information that was not preadjudicated information), underhandedly passed it through the system influencing the CCF to accept it in order to influence the "independent" evaluation of the agency psychiatrist, Forman, hired to perform an independent evaluation of Richards.

35. The CCF failed to list the information, which it relied on to reach its decision to revoke Richards' security clearance, refused to give consideration to, and certainly did not explain away, the findings of two nationally known and respected professionals, June 17, 2004, Dr. Ervin Thompson, Psychiatric Evaluation, TAB MC (32), and Addendum, October 11, 2004, Tab F (25) Pg 254-258, , June 18, 2004, Dr. Bryant Welch, Psychological Evaluation Report, Tab MC (33) P. 218-232; and June 18, 2004. Dr. Bryant Welch, PHD, Tab F (24), Pg(s) 233-253; Tab F (24), Pg 233-253.whose evaluations resulted from Richards' exercise of her right to be evaluated by a psychiatrist of her choice. These reports were not from an unreliable source.

36. §154.56 Procedures. (a) No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set

forth in paragraph (b) of this section when such determination results in an unfavorable administrative action (see §154.55(a). (b).....

37. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) and national security permit. ... Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, chapter 732, subchapter 1, paragraph 1–6b. Richards states, " need the investigative files to learn why CCF adopted the view of Dr. Saul Forman over the view of Drs. Thompson, Welch, my treating psychiatrists Kilaru and Shah, and my treating psychologist, Ms. Sandra Benaway. From a review of the investigative file, I would learn if CCF personnel attempted to resolve the differences and inconsistencies, they would have discovered in Dr. Forman's reports that had no basis available to support one conclusion or another; ¶ I need the investigative files to see if the CCF has psychologists/ psychiatrists, who reviewed the files, or if not, whether other CCF personnel reviewed the files. I should have the opportunity to analyze the investigative file prior to having to reply to the proposed indefinite suspension. The investigative file is relevant and material to answer how the CCF resolved the contradictory diagnosis, major depression, of my treating medical professionals' opinions, the Drs. Thompson and Welch's reports, as compared to Dr. Forman's 2004 action "ruling

out" his own major depressive 2002 diagnosis, and without any explanation substituted "dysthymia." Whether or not I had one or the other relates directly to the issue, whether or not Dr. Forman's 2004 report is suspect, considering he gave no basis in his 2004 report for his change of view, despite never having seen between me between 2002 and 2004. He never would have used the words, rule out," if he meant to do an "add-on" a diagnosis of dysthymia in 2004. This would not make sense either. For one thing, he describes me as "outgoing, and told me that I was a great example of what his profession can do for people. A better reason is that the diagnosis of a dysthymic disorder is not made after a person has a major depression disorder. If the patient has a recurrence it means they have chronic major depression (so explains Dr. Thompson). It follows that the investigative report is important to determine if Dr. Forman considered all the factors, which he needed to consider as a basis for his conclusions. Forman adopted Benedek's diagnosis, which she presented, with no rational basis as support; to answer why the CCF placed no emphasis on my treating medical professionals' five years of records and no emphasis on Drs. Thompson and Welch's reports; to the DOD 5220.6, E2.A9 guide lines, which list disqualifying and mitigating factors, which must be addressed to reach a conclusion.

38. Forman failed to do a required medical exam, TACOM R. 600-5 SPMM, Chapter 14. "Government psychiatrist handles the

medical exam as well, and that a medical examination must be conducted prior to the psychiatric evaluation;
[Richards] can, at her own expense, have an additional evaluation of her own choosing for evaluation for submission with the US Government Evaluation... TAB MC (27).CCF denied Richards' request for reconsideration. CG Thompson recommended Richards security clearance not be granted.

ID P.4 Fn 3,, 5, Fn 5, Fn 6, P, 6, Fn 7.Richards was suspended from duty for the eight months preceding her retirement, and thus not susceptible to any workpiace abuse by the agency during that period." [Since [Richards] received no income during that period her options were limited ...unpleasantness; Pg 6, FN 7, Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, ID, Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, ID Pg(s) 4 and 5, Pg 4, FN 5, Pg 5, FN 6, and Pg 6, FN 7.
ID, [Richards] does not make a non-frivolous claim the agency failed to provide her with the procedural protections required under 5U.S.C. § 7513 when indefinitely suspending her...Richards failed to allege the agency violated any of the seven procedures referenced in Executive order 12968, ID Pg(s) 4 and 5, Pg 4, FN 5, Pg 5, FN 6, and Pg 6, FN 7. "The agency violated a number

of the seven procedures referenced in Executive order 12968.

ID FN7,
Richards alleges the agency failed to provide all the investigative file and states she believes that the investigative file, when she receives it in response to her FOIA requests, it would contain documents explaining the reasons for the CCF's conclusions, E.g.,[See App, Statement of Material Facts ¶ 1, incorporating Richards' affidavit dated September 22, 2004 affidavit and Mahoney Brief, Tab (40),Pg.115, ("The investigative file is relevant and material to answer how the CCF resolved the contradictory diagnosis, major depression, of my treating medical professionals' opinions, the Drs. Thompson and Welch's reports, as d to Dr. Forman's 2004 action "ruling out" his own major depressive 2002 diagnosis without any explanation, substituting "dysthymia." (CCF failed to list the information, which it relied on to reach its decision to preliminary revoke Ms. Richards' security clearance) .(In making its decision, the CCF gave no consideration to the findings of Dr Thompson and Dr. Welch, whose reports were submitted by Ms. Richards).(CCF relied solely on Dr Saul Forman's 2004 diagnosis, ruling out his 2002 diagnosis of major depression and changing it to dysthymia, despite giving no basis at all for his change, and despite never having seen Ms. Richards between 2002 and 2004.). Dr. Forman's 2004 report is tainted by bias. He adopted Dr. Elisa Dr. Forman's 2004

Report does not support a conclusion of defect in judgment, reliability, or stability, another indication of a possible security concern in accordance with DODD e2, a9.1.2.1.)
See also Request for reconsideration, wherein Richards protests the CG's refusal to delay the oral and written reply to the proposal to suspend Richards, because the CCF August 18, 2004 decision to revoke does not give a comprehensive and detailed written explanation for the agency's conclusion, CCF Response, Tab?]

Incorporating Richards' affidavit dated September 22, 2004]
June 3, 2004, Richards' FOIA request, Tab MC (4); June 14, 2004 Richards FOIA requests to Mehney , Tab MC (25); July 25, 2004, FOIA, Richards again requests the Investigative file, Tab MC (8); Sept. 8, 2004, Simonini states faxed Richards FOIA request form (Richards faxed it to Mehney because at that point she was still dealing directly with him, Tab MC (21)); Sept. 8, 2004 Mehney email, Status of Richards FOIA request, and forwards it to Simonini (G2), stating INSCOM has no record of Richards' FOIA Request, Tab MC (22) ; Sept. 12, 2004, Richards email to Mehney, informs him Bedwell has not found her request for investigative file, which she submitted. Sept. 20, 2004, Thompson grants two-day extension, to Sept. 22, 2004, the day she is to give her verbal reply to her .Saturday, Sept. 18, 2004, Richards email Requesting Thompson reconsider and give an extension, to the Monday, Sept. 20, 2004, deadline to submit

her written response to the Sept. 3, 2004 proposal letter., Sept. 28, 2004, DA Intelligence and Security Command FOIA Office Administrative Denial of Richards' request for Investigative File, and admits it failed to comply with the statute, by failing to promptly provide the file prior to the time set for a written reply; and provide a reasonable opportunity to reply in writing, and to request a review of, the determination up to the date, prejudicing Richards., because it has to coordinate with other Commands. Sept. 28, 2004, DA Intelligence and Security Command FOIA Office Administrative Denial of Richards' request for Investigative File, and admits it failed to comply with the statute, by failing to promptly provide the file prior to the time set for a written reply; and provide a reasonable opportunity to reply in writing, and to request a review of, the determination up to the date, prejudicing Richards., because it has to coordinate with other Commands. Tab MC (37), Pg(s) 189-195 and (38), Pg196. Dec. 18, 2004 Richards receives investigative records from Army Medical Command, Benedek Report &"buck slip, note from Szymanski, which she received from the US attorney's office, Tab MC (42), and passes it to AMC Headquarters security office, G2, (establishing a conspiracy.

CG Thompson's Sept. 2, 2004, Memo of Record, basis for indefinitely suspending and refraining from requesting a waiver to the CCF decision...establishing that he has already made his decision, no matter what Richards submits, Tab

MC (18); Friday, Sept. 3, 2004, Advance Notice Of Proposal To Indefinitely Suspend Richards from her position as Chief Counsel for possible revocation of her security clearance until the CCF's Final Determination. Tab MC (19); Sept. 7, 2004, arrangements to look in investigative file mentioned in Mehney's Sept. 3, Proposal of Indefinite Suspension Letter. Tab MC (20); Sept. 12, 2004, Richards' emails Mehney /Richards found Thompson's Sept. 2, 2004 memo documenting that he has already made his decision and therefore the opportunity to present her case was not "real,." Tab MC (27); Sept. 12, 2004, Richards questions Mehney, referencing the Tuesday, Sept. 6 meeting with him (says its Monday by mistake), when she asked him to support her, and persuade Thompson to request a waiver. Sept. 16, 2004, Mehney's response to Richards' different scenario to what happened as compared to what she has documented as to what happened. Mehney informs her that the CG has already decided not to request a waiver, and had made the decision after the Sept. 3, 2004 meeting. Tab MC (27, Tab MC (31) ; Sept. 20, 2004, Thompson grants two-day extension, to Sept. 22, 2004, the day she is to give her verbal reply to her .Saturday, Sept. 18, 2004, Richards email Requesting Thompson reconsider and give an extension, to the Monday, Sept. 20, 2004, deadline to submit her written response to the Sept. 3, 2004 proposal letter. See AD, (I) Denial of Richards' minimum due process rights in the investigation of Richards' security clearance by violation of security regulations and executive order, and acting in

bad faith. Id. App, ¶4, V-I. October 18, 2004, Motion for Summary Judgment granted to Army, Tab MC (41).

(1) Information of the limited right to representation
(2) Right to review documents;
(3) Identification of reviewer and provided of written notice of and reasons for review results, with appeal rights;

_____ Dec. 20, 2008
Verlyn Richards